

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3901 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RASHNALAL CHUNILAL CHAVLA

Versus

STATE OF GUJARAT

Appearance:

MR NAVIN PAHWA with Ms.SUMAN PAHWA for Petitioner
MS HANSABEN PUNANI AGP for Respondent No. 1
MR BHARAT T RAO for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive

detention dated 2nd May, 1999, made by the District Magistrate, Surat under the powers conferred upon her under Sub-section 2 (a) of Section 3 of the Prevention of Black-Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be dealing in petroleum solvent without permission or licence. On the date of inspection, 420 litres of petroleum solvent was seized from his possession.

4. It is contended that the representation made to the Central Government against the impugned order of detention has not been dealt with expeditiously as expected of it and the continued detention of the petitioner is, therefore, illegal and void. The contention has been answered by the Under Secretary to the Government of India, Department of Consumer Affairs, Ministry of Food & Consumer Affairs. It is stated that the representation made on 11th May, 1999 was received by the Government on 14th May, 1999, followed by two public holidays. On 17th May, 1999, the para-wise comments of the State Government were called for, which were received on 22nd May, 1999. Having considered the representation, read with the aforesaid para-wise comments, the representation was rejected on 31st May, 1999. The period between 22nd May, 1999 and 31st May, 1999 has remained unexplained. It appears that 22nd May, 1999, 23rd May, 1999 and 29th & 30th May, 1999 were non-working days, still however, it would be the duty of the concerned authority to explain the period spent from 24th May, 1999 to 28th May, 1999. Mr. Rao, the learned advocate appearing for the Union Government has submitted that the Central Government enjoys the supervisory power and it has to apply mind to the facts available on record before it. Keeping this in view, the five days time taken in processing the representation cannot be said to be unreasonable, which should vitiate the continued detention of the petitioner. In support of his contention, he has relied upon the Supreme Court judgment reported in 1999 (4) SCC 228. Be it noted that the citation was not given in advance and is not available to the Court at the time of hearing. I am, therefore, unable to consider the said judgment. Besides, it is not even contended that during all these five days, the representation was under consideration at one or the other level in the Government. In absence of such averment being made on oath and in view of the prevailing judicial pronouncements, even the five days unexplained delay in processing the representation shall vitiate the

continued detention of the detenu.

4. The petition is, therefore, allowed. The impugned order dated 2nd May, 1999 is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*